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U.S. Department
of Transportation
**Federal Aviation
Administration**

Joint Venture Agreements – Effective Compliance Monitoring Techniques

Office Of Civil Rights

*ACHIEVING SAFETY
THROUGH DIVERSITY*

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Overview

- Joint Venture Background
- Desk Audit
- Site Visit
- Findings & Follow-Up

Do you have a JV?

49 CFR part 23 defines a joint venture as:

*An “association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the **parties combine their property, capital, efforts, skills and knowledge**, and in which the ACDBE is **responsible for a distinct, clearly defined portion of the work** of the contract and whose **share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.**”*

Was it approved for counting?

- JV review process
- JV meets all requirements
- ACDBE credit assigned
- Approval letter issued

JV Review Process Flowchart

The Importance of Contract Language

You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. (§ 23.29)

Sample Approval Letter with Reporting Requirements

Reporting requirements may include:

- Schedule & minutes of management committee (or other governing board) meetings
- Profit and loss statements upon which distributions were determined
- Evidence of payment of distributions
- JV activity reports and detailed summary of its activities
- Detailed documentation of all capital contributions made to the JV (from the ACDBE joint venture partner and non-ACDBE joint venture partner)

Sample Approval Letter with Reporting Requirements (con't)

- Evidence of payments made against loans (if there are loans between the parties)
- Any proposed amendments to the JV Agreement for review prior to the effective date
- Changes to roles and responsibilities of the JV partners prior to their effective date
- Reconciliation of Administrative or Management Fees
- Capital account activity, JV tax returns (including K1s)
- Submittal of additional information as requested

Sample JV Approval Letter

Timing of Monitoring Activities

- Monitoring joint venture agreements is an ongoing process throughout the life of the agreement.
- Documents submitted – quarterly/annually
- Site visits - annually

Desk Audit

- Review of all JV documentation
- Annual verification of ACDBE certification
- May be conducted routinely as documents are submitted or on a scheduled basis

Capital Contributions

- Initial and subsequent contributions – proportionate to ownership
- Cash contributions vs loans
- Types of documentation
- Loan repayment

Schedule of Meetings/ Meeting Minutes

- Schedule of meetings indicates frequency of participation in the overall management
- Meeting minutes will provide information regarding the ACDBEs participation in decision-making and voting

Distributions

- JV Agreement should specify the timing of distributions
- JV Agreement should specify how distributions will be calculated
- Reserves withheld, if any, should be addressed in the JV Agreement
- The calculation for the amount of distributions, if any, should be reviewed

Reserves

- Amount
- Purpose
- Use
- Final Distribution

Operating Statements

- Review the operating statement to determine if there are profits or losses
- Balance the profits or cash flow to the distribution statements
- Losses as well as profits must be shared and may result in a requirement for additional capital contributions

Management Fees

- Recovery of specific documented costs
- Vehicle for monitoring or auditing costs
- Other Names
 - Service Fee
 - Administrative Fee
 - Royalty Fee

Capital Accounts

- Reviewed to verify:
 - Capital contributions
 - Earnings
 - Distributions
 - Other activity

Company XYZ Capital Account Balance 12/31/2017				
	Partner 1	Partner 2	Total	
Beginning Balance	\$1,000	\$1,000	\$2,000	50%/50%
Capital Contributions	\$2,000	\$2,000	\$4,000	50%/50%
Earnings	\$500	\$500	\$1,000	50%/50%
Distributions	\$50	\$150	\$200	25%/75%
Ending Balance	\$3,450	\$3,350	\$6,800	50.7%/49.3%

Tax Returns/K1s

- Tax returns should be reviewed in their entirety
- K1s should be reviewed for ownership percentages, capital account activity, loans, etc.

Frequency

- It is a good practice to review information submitted by the joint venture as it is submitted, often quarterly for most information and annually for tax returns, fee reconciliation, and capital accounts.
- A formal desk audit may be conducted annually in conjunction with a site visit.

Sample Forms(Unofficial)

- [JV Monitoring Checklist](#)
- [JV Sample Desk Audit Review](#)

Notification of Deficiencies

- Formal notification of issues to participants
- Response solicited from participants
- Follow-up

Counting ACDBE Participation in a JV

23.55(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts **equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs** *with its own forces toward ACDBE goals.

Site Visits

- Site visits are a crucial part of joint venture compliance monitoring
- Best practice is at least annually
- Should be conducted:
 - When the ACDBE is expected to be performing its role
 - At the location where the ACDBE performs its role

Site Visits

Scheduled vs Unannounced

- Scheduled site visits
 - Beneficial when there are many questions that require additional information from participants
- Unannounced site visits
 - Beneficial when it appears, based on a review of the documents or through other means, that there may be issues in the ACDBE's performance of roles/responsibilities

Site Visits

- Joint venture assigned responsibilities are not standard between all joint ventures
- Monitoring a joint venture may require a unique approach depending on the assigned roles/responsibilities
- Forms should be tailored to the specific roles/responsibilities

Sample Site Visit

Findings

- Consolidation of desk audit/site visit findings for presentation to participants
- Actions for non-compliance

Sample Letter of Findings

Follow-Up

- Issues reported as resolved must be monitored to ensure the resolution of the issue is implemented effectively
- Follow-up site visits, both scheduled and unannounced should be performed as needed to ensure compliance

Non-Compliance Remedies

- Modify the JV Agreement
- Address financial issues, including contributions/loans
- Lease Agreement Enforcement
- Policy Enforcement

Unacceptable - ACDBE listed in the proposal cannot be terminated without verification of good cause

Questions?



We value your feedback, please
take a moment to fill out the
comment card!

